

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**NOTICE OF HEARING FOR OBJECTION OF PUERTO RICO SALES TAX
FINANCING CORPORATION TO CLAIM OF KPMG, LLC (CLAIM NO. 1177488)**

PLEASE TAKE NOTICE that, on December 19, 2018, the Puerto Rico Sales Tax Financing Corporation (“COFINA”), by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as COFINA’s representative pursuant to Section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² filed the *Objection of Puerto Rico Sales Tax Financing Corporation to Claim of KPMG, LLC* (Claim No. 1177488) (the “Objection”) with the United States District Court for the District of Puerto Rico (the “Court”), seeking to disallow in its entirety Claim No. 1177488 (the “Claim”).

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA” and together with the Commonwealth, COFINA, HTA, and ERS, the “Debtors”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

² PROMESA is codified at 48 U.S.C. §§ 2101-2241.

PLEASE TAKE FURTHER NOTICE that any response to the Objection must be filed in writing with the Court and must be served upon and received by the undersigned counsel for COFINA by **4:00 pm (Atlantic Time) on February 26, 2019.**

PLEASE TAKE FURTHER NOTICE that, in the event that one or more responses to the Objection are timely filed, the Objection shall be considered by The Honorable Laura Taylor Swain, at the United States District Court for the District of Puerto Rico, 150 Carlos Chardón Street, Federal Building, San Juan, Puerto Rico 00918-1767, at **9:30 a.m. on March 13, 2019.**

PLEASE TAKE FURTHER NOTICE THAT, IF NO RESPONSES TO THE OBJECTION ARE TIMELY FILED, SERVED, AND RECEIVED, IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE OBJECTION WITHOUT FURTHER NOTICE OR HEARING.

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PLEASE TAKE FURTHER NOTICE that copies of all documents filed in these Title III Cases are available (a) free of charge by visiting <https://cases.primeclerk.com/puertorico> or by calling +1 (844) 822-9231, and (b) on the Court's website at <http://www.prd.uscourts.gov>, subject to the procedures and fees set forth therein.

Dated: December 19, 2018
San Juan, Puerto Rico

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

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THE COMMONWEALTH OF PUERTO RICO, *et*
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Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**OBJECTION OF PUERTO RICO SALES TAX FINANCING CORPORATION TO
CLAIM OF KPMG, LLC (CLAIM NO. 1177488)**

The Puerto Rico Sales Tax Financing Corporation (“COFINA”), by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as COFINA’s representative pursuant to Section 315(b) of *the Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² files the *Objection of Puerto Rico Sales Tax Financing Corporation to Claim of KPMG, LLC (Claim No. 1177488)* (the “Objection”) to the satisfied claim (Claim No. 1177488) of KPMG, LLC (the “Claimant”), and in support of the Objection, respectfully represents as follows:

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA” and together with the Commonwealth, COFINA, HTA, and ERS, the “Debtors”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

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JURISDICTION

1. The United States District Court for the District of Puerto Rico has subject matter jurisdiction over this matter pursuant to PROMESA section 306(a).

2. Venue is proper in this district pursuant to PROMESA section 307(a).

BACKGROUND

3. COFINA is a public corporation and instrumentality of the Commonwealth constituting a corporate and political entity independent and separate from the Commonwealth, created under Act No. 91 of the Legislative Assembly of the Commonwealth.

4. On May 5, 2017, the Oversight Board, at the request of the Governor, issued a restructuring certification pursuant to PROMESA sections 104(j) and 206 and filed a voluntary petition for relief for COFINA, pursuant to of PROMESA section 304(a), commencing a case under Title III thereof (the “COFINA Title III Case”).

5. Pursuant to the Court’s *Order (A) Fixing Dates to File Creditor Matrix and List of Creditors and (B) Waiving Local Bankruptcy Rule 1007-1 to the Extent Such Rule is Applicable to these Title III Cases* [ECF No. 244], on August 30, 2017, COFINA filed its creditor list and schedule summary. *See Exhibit A to Notice of Filing of Creditor List for Puerto Rico Sales Tax Financing Corporation (“COFINA”)* [Case No. 17-3283, ECF No. 1216-1] (the “Creditor List”); *Exhibit B to Notice of Filing of Creditor List for Puerto Rico Sales Tax Financing Corporation (“COFINA”)* [Case No. 17-3283, ECF No. 1216-2] (the “Schedule Summary”). COFINA’s Schedule Summary listed KPMG, LLC, as a creditor for audit fees in the amount of \$218,810.56. Because this scheduled liability was not marked by COFINA on the Creditor List as contingent, unliquidated, or disputed, the liability was converted to a claim against COFINA and logged by

Prime Clerk as Claim No. 1177488 (the “Claim”). COFINA subsequently satisfied the Claim by paying postpetition any amount owed and confirming no additional prepetition amount is owed.

OBJECTION TO CLAIM

6. This Objection seeks to disallow a satisfied claim. Claims that are “unenforceable against the debtor and property of the debtor, under any agreement or applicable law” should be disallowed. 11 U.S.C. § 502(b)(1). While a properly executed and filed proof of claim constitutes *prima facie* evidence of the validity of the claim, *see* Fed. R. Bankr. P. 3001(f), made applicable to this case by PROMESA section 310, the objecting party may overcome this *prima facie* evidence with evidence which, if believed, would refute at least one of the allegations essential to the claim. *In re Reilly*, 245 B.R. 768, 773 (B.A.P. 2d Cir.), *aff’d*, 242 F.3d 367 (2d Cir. 2000); *see also Factors Funding Co. v. Fili (In re Fili)*, 257 B.R. 370, 372 (1st Cir. B.A.P. 2001) (“[A] claim is presumed valid until an objecting party has introduced evidence sufficient to rebut the claimant’s *prima facie* case.” (citation omitted)).

7. As explained herein and in the *Declaration of Jay Herriman in Support of the Objection of Puerto Rico Sales Tax Financing Corporation to Claim of KPMG, LLC (Claim No. 1177488)*, attached hereto as **Exhibit A**, the Claim was paid by COFINA postpetition and nothing further is owed for any prepetition liabilities. Accordingly, the Claim no longer represents a valid claim against COFINA and should be disallowed in its entirety. *See* 11 U.S.C. § 502(b)(1); *see also* Fed. R. Bankr. P. 3007(d)(5) (allowing omnibus objections to be filed for satisfied claims). Because the Claim has been satisfied, any failure to disallow the Claim will result in the Claimant potentially receiving an unwarranted double recovery against COFINA, to the detriment of other stakeholders in the COFINA Title III Case. The Claimant will not be prejudiced by the disallowance of the Claim because the Claim has already been satisfied.

RESERVATION OF RIGHTS

8. This Objection is limited to the grounds stated herein. Accordingly, it is without prejudice to the rights of COFINA to object to the Claim or any other claim on any ground whatsoever. COFINA expressly reserves all further substantive or procedural objections. Nothing contained herein or any actions taken pursuant to such relief is intended or should be construed as: (a) an admission as to the validity of any claim against COFINA; (b) a waiver of COFINA's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (e) a waiver of COFINA's rights under PROMESA, the Bankruptcy Code or any other applicable law.

NOTICE

9. COFINA has provided notice of this Objection to (a) the individual creditor subject to this Objection, (b) the U.S. Trustee, and (c) the Master Service List (as defined by the *Order Further Amending Case Management Procedures* [ECF No. 3804]), which is available on the Debtors' case website at <https://cases.primeclerk.com/puertorico>. COFINA submits that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

10. No prior request for the relief sought in this Objection has been made to this or any other court.

[Remainder of page intentionally left blank.]

WHEREFORE COFINA respectfully requests entry of an order, substantially in the form of the Proposed Order attached hereto as **Exhibit B**, (1) granting the relief requested herein, and (2) granting COFINA such other and further relief as is just.

Dated: December 19, 2018
San Juan, Puerto Rico

Respectfully submitted,

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EXHIBIT A

Declaration of Jay Herriman

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**DECLARATION OF JAY HERRIMAN IN SUPPORT OF THE OBJECTION OF
PUERTO RICO SALES TAX FINANCING CORPORATION TO CLAIM OF
KPMG, LLC (CLAIM NO. 1177488)**

I, Jay Herriman, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief:

1. I am a Managing Director of Alvarez & Marsal North America, LLC (“A&M”). The Financial Oversight and Management Board (the “Oversight Board”) retained A&M to assist with, *inter alia*, the claims reconciliation process for the Debtors’ cases filed pursuant to the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”).² Unless otherwise stated in this declaration, I have personal knowledge of the facts set forth herein.

2. In my capacity as Managing Director of A&M, I am one of the persons responsible

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² PROMESA is codified at 48 U.S.C. §§ 2101-2241.

for overseeing the claims reconciliation and objection process in the Debtors' cases filed pursuant to PROMESA. The Debtors' ongoing claims reconciliation process involves the collective effort of a team of A&M employees, as well as Proskauer Rose LLP and O'Neill & Borges LLC, counsel for the Oversight Board, the legal representative for COFINA.

3. I submit this declaration in support of the *Objection of Puerto Rico Sales Tax Financing Corporation to Claim of KPMG, LLC (Claim No. 1177488)* (the "Objection"). I have personally reviewed the Objection and am, accordingly, familiar with the information contained therein.

4. In preparation for filing the Objection, and under my direction and/or supervision, the claim related to the scheduled liability for KPMG, LLC (the "Claimant"), in the amount of \$218,810.56 (Claim No. 1177488) (the "Claim") was carefully reviewed and analyzed in good faith using due diligence by the appropriate personnel. To the best of my knowledge, information, and belief, the scheduled liability in the Claim was paid postpetition and the Claimant has confirmed that nothing further is owed for any prepetition liabilities. Accordingly, the Claim has been satisfied, and, to prevent multiple recoveries by the Claimant, COFINA requests that the Claim be disallowed in its entirety.

5. Based on the foregoing, and to the best of my knowledge, information, and belief, the information contained in the Objection and exhibits thereto is true and correct, and the relief requested therein is in the best interests of COFINA and its creditors.

6. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Dated: December 19, 2018

By: /s/ Jay Herriman
Jay Herriman

EXHIBIT B

Proposed Order

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et*
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PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**ORDER GRANTING OBJECTION OF PUERTO RICO SALES TAX FINANCING
CORPORATION TO CLAIM OF KPMG, LLC (CLAIM NO. 1177488)**

Upon the *Objection of Puerto Rico Sales Tax Financing Corporation to Claim of KPMG, LLC (Claim No. 1177488)*, (the “Objection”),² dated December 19, 2018, of the Puerto Rico Sales Tax Financing Corporation (“COFINA”), for entry of an order disallowing in its entirety the claim of KPMG, LLC (Claim No. 1177488) (the “Claim”), as more fully set forth in the Objection and supporting exhibit thereto; and the Court having jurisdiction to consider the Objection and to grant the relief requested therein pursuant to Section 306(a) of PROMESA; and venue being proper pursuant to Section 307(a) of PROMESA; and due and proper notice of the Objection having been provided to those parties identified therein, and no other or further notice being required; and the

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² Capitalized terms used but not defined herein shall have the meanings set forth in the Objection.

Court having determined that the relief sought in the Objection is in the best interest of COFINA, its creditors, and all the parties in interest; and the Court having determined that the legal and factual bases set forth in the Objection establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Objection is GRANTED as set forth herein; and it is further

ORDERED that the Claim is hereby disallowed in its entirety; and it is further

ORDERED that Prime Clerk, LLC, is authorized and directed to delete the Claim from the official claims register in the COFINA Title III case (Case No. 17 BK 3284-LTS); and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____

Honorable Judge Laura Taylor Swain
United States District Judge